

EXHIBIT

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ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
TIMES SQUARE CONSTRUCTION, INC.,

Plaintiff,

-against-

07-CV-7250

MASON TENDERS DISTRICT COUNCIL OF
GREATER NEW YORK & LONG ISLAND and
CONSTRUCTION GENERAL LABORERS JATC,
LOCAL UNION NO. 79,

Defendants.
-----X

October 26, 2007

10:16 a.m.

Deposition of KEVIN O'SULLIVAN, held
at the offices of Meyer, Suozzi, English &
Klein, P.C., 1350 Avenue of the Americas,
New York, New York, pursuant to Notice,
before John Ianno, Jr., a Notary Public of
the State of New York.

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2 **KEVIN O'SULLIVAN,**

3 called as a witness, having been first duly
4 sworn by the Notary Public (John Ianno, Jr.),
5 was examined and testified as follows:

6 **EXAMINATION BY**

7 **MR. PETERSON:**

8 Q. Good morning, I'm Lowell Peterson, I
9 represent the union defendants in this case. Have
10 you given a deposition before?

11 A. Yes.

12 Q. In a union-related matter?

13 A. No, it was -- with the Transit
14 Authority, I think, injury, years ago.

15 Q. What is your current employer?

16 A. Times Square Construction.

17 Q. You are an owner of Times Square;
18 correct?

19 A. That's correct.

20 Q. Your brother, Donal is the other 50
21 percent owner?

22 A. Yes.

23 Q. You are a 50 percent owner as well?

24 A. Correct.

25 Q. So if Times Square makes a

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2 distribution to the owners, you would get half and
3 he would get half; is that correct?

4 A. That would be correct, after all
5 expenses and stuff like that. We haven't got that
6 far yet, though.

7 Q. Well, that's why we are lawyers and
8 you are in business. You take the risks. You are
9 also a 50 percent owner of Navillus, correct?

10 A. Correct.

11 Q. Similarly, your brother is the other
12 50 percent owner?

13 A. Correct.

14 Q. If Navillus does a profit
15 distribution, you would get half and your brother
16 would get half; is that right?

17 A. Yes.

18 Q. Who are the officers of Times Square
19 at this moment?

20 A. Just me.

21 Q. Were there ever any other officers of
22 Times Square?

23 A. No.

24 Q. You had been an officer of Navillus;
25 correct?

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Q. Do you remember him contacting you about the Chatman School?

A. I don't.

Q. What about your brother, Donal's involvement in Times Square, what work has he done, when I say work, I'm speaking very broadly again, phone calls, signing documents, attending meetings, whatever, what kinds of things has he done for Times Square?

A. On a day-to-day basis, nothing. Locating new projects or new development sites, you know.

Q. Could you expand a little when you say he looks at new projects and development sites?

A. I'm the one who would be sourcing the new project if I came, like a particular project, as to Donal, I would ask him what would his thoughts be, or would he invest as a developer.

Q. So you would be doing the legwork, but if something appealed to you, you and he would make a decision together about whether to get into that project; right?

A. I would ask his opinion, what he would think, but he would refer it back to me, being

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2 produced to us in discovery, so --

3 A. But if this is the actual document
4 that was produced, the financial people, I don't
5 know.

6 Q. Why did you ask Tony Del Greco to come
7 to work for Times Square?

8 A. I was building my team.

9 Q. Why him in particular?

10 A. Tony had his background knowledge with
11 big developers who did work.

12 Q. And he had prepared this cost estimate
13 on the Eighth Avenue job; right?

14 A. Yes.

15 Q. So he worked, continued to work on the
16 Eighth Avenue work after he came to work for Times
17 Square; right?

18 A. He continued to work with Eighth
19 Avenue, for Times Square, yes.

20 Q. Who made the decisions about which
21 subcontractors would be hired at the Eighth Avenue
22 job?

23 A. That would be my decision.

24 Q. Is the same true with respect to the
25 34th Street job?

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2 A. Yes.

3 Q. What company got the subcontract to do
4 the concrete work at Eighth Avenue?

5 A. Navillus.

6 Q. How about the foundation work?

7 A. Russo did the excavation, Navillus did
8 the concrete.

9 Q. What about the masonry?

10 A. Navillus.

11 Q. What about the superstructure
12 concrete?

13 A. Navillus.

14 Q. Did you request, did you, in this
15 case, speaking about Times Square, did Times
16 Square request bids from various subcontractors
17 with respect to the Eighth Avenue job?

18 A. Did we source for bids?

19 Q. Yes.

20 A. For Eighth Avenue?

21 Q. Yes.

22 A. Yes.

23 Q. Did you source for bids for the
24 concrete, masonry or superstructure concrete?

25 A. We didn't for the foundation or

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2 superstructure.

3 Q. Why not?

4 A. Because there was not a proper set of
5 documents that we could send it out for bid. The
6 building went from 29 stories to 43 stories, the
7 actual final set of design drawings on the
8 concrete were completed in, believe it or not,
9 August, 2007, so we could not get a proper, solid
10 bid from a contract.

11 Q. Is concrete and masonry the only trade
12 that was effected by the lack of a proper set of
13 documents?

14 A. Mostly it effected the superstructure
15 and the masonry.

16 Q. Didn't effect the drywall?

17 A. No, very little, minor.

18 Q. Did it effect any of the other trades?

19 A. It -- the main impact would have been
20 superstructure.

21 Q. Why did you go to Navillus and not
22 some other concrete sub?

23 A. Because it was my first building I was
24 putting up, I was being very cautious that if I
25 brought in a contractor that I didn't know, that I

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A. They would want Navillus.

Q. Why?

A. To do the -- being as I said, being that we didn't have a proper set of documents, they were nervous themselves that they would get taken for a ride themselves.

Q. Why not go with some other concrete sub on a cost plus basis, why go with Navillus?

A. Because Navillus they felt if Navillus was the owners, were part of the development, that they wouldn't, it would be fair, they wouldn't screw each other, excuse my language, and they knew that, you know, being that the -- one of the owners of or the owners of the project was performing the work, that it was in their best intentions that the work would be performed and done as aggressively as possible and get the job done, and they wouldn't get held up.

Q. You spoke with your other partners about that and that's what they told you?

A. Oh, yes.

Q. And you felt the same way?

A. Absolutely.

Q. And your brother felt the same way?

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2 A. Navillus felt very comfortable with it
3 as well, because Donal at that time was building
4 his foundation -- his portion of Navillus
5 foundations and superstructure, so he was trying
6 to build a portfolio for himself. Navillus
7 performs all this work and so on, so it was to his
8 benefit as well. He wasn't making as much money
9 out of it, but he wasn't getting hurt either.

10 Q. Why was he not making as much money?

11 A. You know, if you had a proper set of
12 documents, you know, you could -- it depends on
13 the market; right now if you look at
14 superstructure concrete guys it is crazy, they
15 are -- the price has gone nuts because they can
16 pick and choose what they want, because there are
17 not enough superstructure concrete to do the work.

18 Q. They can make more than 10 percent
19 profit?

20 A. They can, absolutely. They wouldn't
21 do it, you won't get a contractor to do it for 10
22 percent now.

23 Q. What is the typical margin?

24 A. Well, I have to ask superstructure
25 guys that, but I would say it is well above 20

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2 work over on the sub so that to make them
3 responsible for their own clean up, et cetera.

4 Q. All right, did Times Square hire
5 anybody to do the cleanup work at Eighth Avenue?

6 A. Albanese, am I saying his name right?

7 Q. Albanese. Was there a student --

8 A. Yes.

9 Q. What was his name?

10 A. Fergal Cronan.

11 Q. When did he start working at Eighth
12 Avenue?

13 A. If he is a student, that's what I'm
14 trying to remember, maybe it was June, the exact
15 date, I don't know.

16 Q. Do you know how long he worked at the
17 site?

18 A. Just summer. I know his mother back
19 in Ireland, and she asked me, her son was going
20 over for a couple of months, she told me would I
21 be able to help them out, so I said yes.

22 Q. Did he work full-time at the site?

23 A. While he was with Times Square, yes.

24 Q. Do you know if it was a 40 hour week,
25 or did he work more than that?

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A. I heard Navillus complaining, Gabriel complaining Local 79 were tormenting him to put a man on the job.

Q. Gabriel was calling you?

A. Fergal.

Q. But 79 was tormenting Navillus --

A. Gabriel, because Gabriel is the -- Navillus may have a hundred or two maybe more working for them. So the delegate would be calling Gabriel, and Gabriel would be saying not mine, nothing to do with me, call Times Square, but they had no relationship I guess with Fergal, with anybody, they didn't know him, but they kept on to Gabriel.

Q. So did Gabriel say who it was that Local 79 said ought to hire a 79 guy, whether it was Navillus, or Times Square, or whether it made a difference?

A. Sorry, say that again.

Q. You said Gabriel, you heard through Fergal Conefrey that Gabriel was complaining 79 kept calling him to put a man on?

A. Correct.

Q. Do you know who it was that was

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2 supposed to put a man on? Was it Navillus that
3 was supposed to put a man, or Times Square -- did
4 Fergal tell you anything about that?

5 A. They wanted, Navillus said it was not
6 their responsibility to call Times Square if they
7 want to put a man on, that they had no
8 authorization to put a man, but being that Gabriel
9 I guess has -- I would imagine 10, 15 years
10 relationship with them, that's why they kept
11 nagging Gabriel.

12 Q. And then hence Fergal contacted you?

13 A. Fergal was on to me about it then.

14 Q. What did Fergal say?

15 A. Same thing, that they are tormenting
16 Gabriel to put a guy on. I believe eventually the
17 local rep started to call Fergal, Fergal had came
18 to me about it. I wasn't obliged to hire anybody
19 from Local 79, because the job was at too early,
20 we didn't need him, but you know, I took a -- just
21 to -- a position being just to keep peace on the
22 job, that being that I, you know, I used to work
23 with Navillus for a lot of years myself, you know,
24 if they give us a good guy that will perform the
25 work, and one of the conditions I think we asked

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2 them that time because, you know, we needed
3 something more, being that it was early stages,
4 and that wouldn't have been enough work for a
5 Local 79 guy, that he would come -- have a site
6 safety license. So based on if they fulfilled
7 those requests, and I decided yes, sure, that's
8 fine.

9 Q. So you are saying at that stage,
10 because the project hadn't advanced, there really
11 wasn't work for a 79 guy?

12 A. I guess we weren't obliged to hire a
13 clean up laborer, you know, I had Fergal, an
14 assistant, there at the time.

15 MR. COHEN: You mean Fergal Cronan.

16 THE WITNESS: Fergal Cronan, he was
17 performing any stuff Times Square wanted at
18 that point. Did we need another 79, another
19 employee, or 79, or whoever may be on the
20 job for cleanup, no.

21 Q. Okay. You thought a site safety
22 supervisor would be useful?

23 A. I thought, you know, as I said, being
24 my prior relationship being with Navillus for so
25 long and being the Navillus has with Local 79 and

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2 just to keep peace rather than -- I says guys,
3 fine, give us a guy that will work, and give us a
4 guy that who has a site safety license so we could
5 keep him. If the guy turned out good and was a
6 good guy and wanted to work, you know, that would
7 be full-time work for him.

8 Q. As a site safety?

9 A. As whatever, he came on as a 79
10 laborer and sure, I mean if the guy proven to be
11 committed and wanted to -- really wanted to do,
12 you know, cared about the job, you know, possibly
13 down the road we could have hired him as a
14 full-time Times Square person.

15 Q. At this point in time, was Wayne
16 Murphy still working for Navillus?

17 A. Yes, I believe so, yes.

18 Q. So did Times Square, as the
19 construction manager or GC, need its own site
20 safety supervisor?

21 A. We were recruiting, Times Square is a
22 young company, so we are recruiting, trying to
23 recruit good people, get good people in, so we
24 were aggressively looking for site safety people.

25 Q. Well, just in general, if you had one

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2 as I was with Navillus for years before I started
3 Times Square, and if the guy would come with --
4 that they would give me a person that would just
5 perform his daily duties, and that would have site
6 safety license, they were my requests.

7 Q. I'm asking a much narrower question.
8 In your conversations with Brosnan and Vita,
9 didn't the issue about Fergal Cronan doing what
10 Local 79 asserted to be laborers work come up?

11 A. His name came up, and at that point we
12 said fine, Nick, you do the work, no problem,
13 Fergal has plenty of work to do as assistant
14 super, or PM with Fergal or Lenny. He had --
15 Times Square had no problem whatsoever stepping
16 back and letting Nick to perform the work.

17 Q. And he talked about that with Tony and
18 John?

19 A. That was in conversation, yes.

20 Q. Now at some point you heard through
21 Fergal that Navillus didn't want to have anything
22 to do with this paymaster situation any more.
23 What did you do as a result of that?

24 A. We sourced a new paymaster.

25 Q. Who did you source?

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2 A. A company called Par Wrecking.

3 Q. How did you come up with par?

4 A. One of our executives, Kieran Powers,
5 had worked with them in the past.

6 Q. Did you speak with anyone at Par
7 Wrecking?

8 A. At the time we were bringing them on
9 as paymaster I would have spoken, yes.

10 Q. Do you recall who you spoke with at
11 Par?

12 A. He is the owner, I can't recall his
13 name.

14 Q. Do you recall what you told him about
15 the situation?

16 A. I don't recall, we had asked him to be
17 a paymaster.

18 Q. Did you say anything about their being
19 any issues or problems in connection with 79 on
20 the job?

21 A. I don't recall, I don't recall what
22 we -- he was approached to be a paymaster, was he
23 told our previous paymaster didn't want to be
24 paymaster any more? I can't remember that, but
25 bear in mind Par Wrecking was our paymaster for

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1
2 well aware Navillus is not the GC, nothing to do
3 with the job.

4 Q. Look at the date on that, February,
5 2006?

6 A. Yes.

7 Q. Was Navillus the GC already?

8 A. God, no.

9 Q. Was Times Square already the GC?

10 A. Times Square the GC on the project at
11 2/28/06, that is very much around the same time
12 that Times Square was, but to be -- the financing
13 was secured with Times Square, not with Navillus,
14 Navillus were never going to be a general
15 contractor on the job.

16 Q. But the document said Navillus?

17 A. The printout here says Navillus, yes,
18 but absolutely not.

19 Q. Do you know how the word Navillus gets
20 on the computer document?

21 A. I'm not a computer guy to be honest
22 with you, but the way the systems are set up I
23 would imagine it printed out like that.

24 Q. So somebody couldn't go into the
25 computer and type Times Square instead of